WP(C) 3857/2001

BEFORE

THE HON'BLE MR. JUSTICE B.K. SHARMA

Heard Ms. M. Malakar, learned counsel for the petitioner. None has appeared for the respondents.

By means of this writ petition, the petitioner has prayed for a direction to the respondents not to interfere with the right and liberty of the petitioner in respect of his land measuring 16 Lessas of Dag No. 1320, K.P. Patta No. 14 of village-Japorigog under Beltola Mouza, District-Kamrup as described in the prayer portion of the writ petition.

While entertaining the writ petition by order dated 5.6.2004, the petitioner's possession over the land was protected. However, in consideration of the affidavit-in-opposition filed by the respondents, the said interim order was discontinued by order dated 30.3.2005. The matter is pending since then.

As stated in the writ petition, the petitioner's brother Sri Rajib Kr. Sarmah borrowed a sum of Rs. 2,80,000/- with 15/16 % interest per annum in the year 1994. The father of the petitioner namely Sri Dibakar Sarmah gave additional security by way of equitable mortgage of 1 Katha 5 Lessas land under Dag No. 1320 KP Patta No. 14 of Village-Japorigog of Mouza-Beltola. According to the petitioner, during the life time of the petitioner's father Late Dibakar Sarmah donated 13 Lessas out of remaining 1 Katha 5 Lessas of land to the petitioner vide a registered sale deed executed on 18.3.1998. The petitioner also took a loan of Rs. 1,75,000/- from the S.B.I. Home Finance Ltd. on 28.4.1998.

In the counter affidavit filed by the respondents, it has been stated that the loan obtained by Sri Rajib Kr. Sarmah was secured by hypothecation of plant & machinery and equitable mortgage of landed property of 1 katha and 5 lessas out of 2 kathas and 10 lessas of land covered by Dag No. 1320, Patta No. 14 of village-Japorigog, Mouza-Beltola vide hypothecation mortgage deed dated 15.6.1994 and 14.6.1994. The title deed for the mortgage was also deposited. The respondent corporation had no knowledge about donation of the land of 13 lessas out of 1 katha and 5 lessas. Late Dibakar Sarmah never informed the respondent corporation about the alleged gift during his lifetime. The petitioner furnished the particular information about the gift deed after 9 years of the mortgage of the land to the respondent corporation.

The affidavit further states that the petitioner never informed the respondent corporation that he took loan for sum of Rs. 1,75,000/- from the S.B.I. Home Finance on 28.4.1998. In paragraph 10 of the counter affidavit, it has been stated that the petitioner approached the respondent corporation for a negotiated settlement of the loan account of his brother and the corporation after examining the proposal agreed to settle the loan on receipt of Rs. 4.50 lakhs subject to the approval of the Board of Directors of the respondent corporation.

In paragraph-11 of the counter affidavit, it has been stated that the official of the respondent corporation along with the officials of the Settlement Office demarcated only the mortgaged land.

In view of the above, no fault can be attributed to the respondent corporation in their proposed action. Moreover, as stated above, the stay order earlier granted has also been vacated.

For all the above, I do not find any merit in the writ petition and accordingly, it is dismissed.